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**HUMAN RIGHTS COMMITTEE**

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**UNITED STATES OF AMERICA\***

**Addendum**

**Comments by the Government of the United States of America on the  
concluding observations of the Human Rights Committee**

[1 November 2007]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

## United States Responses to Selected Recommendations of the Human Rights Committee

October 10, 2007

In its concluding observations of the second and third periodic reports of the United States of America, the Human Rights Committee requested that the United States provide, within one year, information pertaining to selected recommendations.<sup>1</sup> These specific recommendations and the United States' responses to them are provided below.

### Scope of Application of the Covenant

As a preliminary matter, the United States notes that most of the Committee's requests for information on follow-up to its recommendations concern matters outside of the territory of the United States. These matters relate to "secret detention" (para. 12), "interrogation techniques" (para. 13), investigations into allegations of abuse (para. 14), "transfer, rendition, extradition, expulsion or refoulement" of detainees "in facilities outside [United States] territory" (para. 16), and the applicability of Common Article 3 of the Geneva Conventions (para. 20).

The United States takes this opportunity to reaffirm its long-standing position that the Covenant does not apply extraterritorially. States Parties are required to ensure the rights in the Covenant only to individuals who are (1) within the territory of a State Party and (2) subject to that State Party's jurisdiction. The United States Government's position on this matter is supported by the plain text of Article 2 of the Covenant and is confirmed in the Covenant's negotiating history (*travaux préparatoires*). Since the time that U.S. delegate Eleanor Roosevelt successfully proposed the language that was adopted as part of Article 2 providing that the Covenant does not apply outside the territory of a State Party, the United States has interpreted the treaty in that manner.<sup>2</sup> The views of the United States on this matter were described at length in Annex 1 of the U.S. report to the Committee<sup>3</sup> and were discussed at length during the U.S. presentation of its report in July 2006.

Accordingly, the United States respectfully disagrees with the view of the Committee that the Covenant applies extraterritorially. Nevertheless, as a courtesy, the United

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<sup>1</sup> See Human Rights Committee, Concluding Observations of the Human Rights Committee — United States of America. Doc. No. CCPR/C/USA/CO/3/Rev.1 at para. 39 (Dec. 18, 2006).

<sup>2</sup> See e.g., Statement by Eleanor Roosevelt, *Summary Record of the Hundred and Thirty-Eighth Meeting*, U.N. ESCOR Hum. Rts. Comm., 6th Sess., 138th mtg at 10, U.N. Doc. E/CN.4/SR.138 (1950). This interpretation was also conveyed to the Human Rights Committee in 1995 by Conrad Harper, the Legal Adviser of the U.S. Department of State. In response to a question posed by the Committee, Mr. Harper stated that "Article 2 of the Covenant expressly stated that each State Party undertook to respect and ensure the rights recognized 'to all individuals within its territory and subject to its jurisdiction.' That dual requirement restricted the scope of the Covenant to persons under United States jurisdiction and within United States territory. During the negotiating history, the words 'within its territory' had been debated and were added by vote, with the clear understanding that such wording would limit the obligations to within a Party's territory. Summary record of the 1405th meeting: United States of America, UN ESCOR Hum. Rts. Comm., 53rd Sess., 1504th mtg. at ¶¶ 7, 20, U.N. Doc. CCPR/C/SR 1405 (1995).

<sup>3</sup> Second and Third Periodic Report of the United States of America to the UN Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, Annex 1, *available at* <http://www.state.gov/g/drl/rls/55504.htm> (Oct. 21, 2005) [hereinafter "ICCPR Report"].

States provides herein additional information on the topics requested by the Committee, including information on matters outside the scope of the Covenant.

## Paragraph 12

### Recommendation:

“The State party should immediately cease its practice of secret detention and close all secret detention facilities. It should also grant the International Committee of the Red Cross prompt access to any person detained in connection with an armed conflict. The State party should also ensure that detainees, regardless of their place of detention, always benefit from the full protection of the law.”

### Response:

The United States is engaged in an armed conflict with al Qaida, the Taliban, and their supporters. As part of this conflict, the United States captures and detains enemy combatants, and is entitled under the law of war to hold them until the end of hostilities. The law of war, and not the Covenant, is the applicable legal framework governing these detentions.

In certain rare cases, the United States moves enemy combatants to secret locations. As the President of the United States stated in a September 6, 2006 speech, “Questioning the detainees in this program has given us information that has saved innocent lives by helping us stop new attacks -- here in the United States and across the world.”<sup>4</sup> Under the law of war there is no legal obligation for the United States to provide ICRC notice and access to these enemy combatants who are held during the ongoing armed conflict with al Qaida, the Taliban, and their supporters.

All of the detainees who were in this secret interrogation program as of September 6, 2006, were moved to the Department of Defense detention facility at Guantanamo Bay. The ICRC has been notified and has access to these detainees, as they have to all detainees at Guantanamo. Moving forward, as the President of the United States explained, “[a]s more high-ranking terrorists are captured, the need to obtain intelligence from them will remain critical -- and having a CIA program for questioning terrorists will continue to be crucial to getting life-saving information.”<sup>5</sup>

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<sup>4</sup> President Discusses Creation of Military Commissions to Try Suspected Terrorists, Office of the Press Secretary, available at <http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html> (Sept. 6, 2006).

<sup>5</sup> *Id.*

### Paragraph 13

#### **Recommendation:**

“The State party should ensure that any revision of the Army Field Manual only provides for interrogation techniques in conformity with the international understanding of the scope of the prohibition contained in article 7 of the Covenant; the State party should also ensure that the current interrogation techniques or any revised techniques are binding on all agencies of the United States Government and any others acting on its behalf; the State party should ensure that there are effective means to follow suit against abuses committed by agencies operating outside the military structure and that appropriate sanctions be imposed on its personnel who used or approved the use of the now prohibited techniques; the State party should ensure that the right to reparation of the victims of such practices is respected; and it should inform the Committee of any revisions of the interrogation techniques approved by the Army Field Manual.”

#### **Response:**

As noted elsewhere in this submission, the United States is engaged in an armed conflict with al Qaida, the Taliban, and their supporters. As part of this conflict, the United States captures and detains enemy combatants, and is entitled under the law of war to hold them until the end of hostilities. The law of war, and not the Covenant, is the applicable legal framework governing these detentions. There are, of course, many analogous protections under the law of war, which the United States fully respects.

For instance, international humanitarian law prohibits torture of detainees in international or non-international armed conflict. Consistent with international humanitarian law, there is a statutory prohibition in U.S. criminal law against the torture of anyone in the custody or under the physical control of the United States Government outside the territory of the United States. In addition, cruel, inhuman, and degrading treatment or punishment of anyone in the custody or under the physical control of the United States Government is prohibited both within and outside of the territory of the United States.<sup>6</sup> All detainee interrogations are conducted in a manner consistent with these prohibitions, as well with Common Article 3 of the Geneva Conventions.<sup>7</sup>

In September 2006, following the U.S. presentation of its report to the Committee, the Department of Defense released the updated detainee program Directive 2310.01e (“The Department of Defense Detainee Program”) and the Army released its revised Field Manual on interrogation. These documents are attached in Annexes 1 and 2, respectively. They provide guidance to military personnel to ensure compliance with the law, including Common Article 3 of the Geneva Conventions.

For instance, the revised Army Field Manual states that “[a]ll captured or detained personnel, regardless of status, shall be treated humanely, and in accordance with the

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<sup>6</sup> Detainee Treatment Act of 2005, Pub. L. No. 109-148, Title X (Dec. 30, 2005).

<sup>7</sup> See e.g., Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, art. 3, 75 UNTS 135.

Detainee Treatment Act of 2005 and DOD Directive 2310.1E . . . and no person in the custody or under the control of DOD, regardless of nationality or physical location, shall be subject to torture or cruel, inhuman, or degrading treatment or punishment, in accordance with and as defined in U.S. law.”<sup>8</sup> The Field Manual also provides specific guidance, including a non-exclusive list of actions -- such as “waterboarding” and placing a hood or sack over the head of a detainee, among others -- that are prohibited when used in conjunction with interrogations.<sup>9</sup> Finally, the Field Manual provides guidance to be used while formulating interrogation plans for approval. For example, the Field Manual states:

“In attempting to determine if a contemplated approach or technique should be considered prohibited . . . consider these two tests before submitting the plan for approval:

- If the proposed approach technique were used by the enemy against one of your fellow soldiers, would you believe the soldier had been abused?
- Could your conduct in carrying out the proposed technique violate a law or regulation? Keep in mind that even if you personally would not consider your actions to constitute abuse, the law may be more restrictive.

If you answer yes to either of these tests, the contemplated action should not be conducted.”<sup>10</sup>

We would also note that U.S. law provides several avenues for the domestic prosecution of United States Government officials and contractors who commit torture and other serious crimes overseas. For example, section 2340A of title 18 of the United States Code authorizes the prosecution of any U.S. national who commits torture outside of the United States, while section 2441 does the same for serious violations of Common Article 3. Similarly, under the provisions of the Military Extraterritorial Jurisdiction Act (“MEJA”),<sup>11</sup> persons employed by or accompanying the Armed Forces outside the United States may be prosecuted domestically if they commit a serious criminal offense overseas. MEJA specifically covers all civilian employees and contractors directly employed by the Department of Defense and, as amended in October 2004, also those employed by other United States Government agencies, to the extent that such employment relates to supporting the mission of the Department of Defense overseas.

In addition, U.S. nationals who are not currently covered by MEJA are still subject to domestic prosecution for certain serious crimes committed overseas if the crime was committed within the special maritime and territorial jurisdiction of the United States defined in section 7 of title 18 (e.g., U.S. diplomatic and military missions overseas).

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<sup>8</sup> Army Field Manual 2-22.3, Human Intelligence Collector Operations, para. 5-74.

<sup>9</sup> *Id.* at para. 5-75.

<sup>10</sup> *Id.* at paras. 5-76, 5-77.

<sup>11</sup> Military Extraterritorial Jurisdiction Act of 2000, Pub. L. No. 106-523, codified at 18 U.S.C. § 3261 *et seq.*

These crimes include murder under section 1111 of title 18, assault under section 113, and sexual abuse under section 2241.

Finally, in 2006 the Uniform Code of Military Justice (“UCMJ”) was amended so that it now includes within its scope of application, “[i]n time of declared war or a contingency operation, persons serving with or accompanying an armed force in the field.”<sup>12</sup> This amendment broadens the coverage of the UCMJ to provide court-martial jurisdiction over these individuals not only during conflicts where the United States has issued a declaration of war, but also during certain other significant military operations.

#### **Paragraph 14**

##### **Recommendation:**

“The State party should conduct prompt and independent investigations into all allegations concerning suspicious deaths, torture or cruel, inhuman or degrading treatment or punishment inflicted by its personnel (including commanders) as well as contract employees, in detention facilities in Guantanamo Bay, Afghanistan, Iraq and other overseas locations. The State party should ensure that those responsible are prosecuted and punished in accordance with the gravity of the crime. The State party should adopt all necessary measures to prevent the recurrence of such behaviors, in particular by providing adequate training and clear guidance to its personnel (including commanders) and contract employees, about their respective obligations and responsibilities, in line with articles 7 and 10 of the Covenant. During the course of any legal proceedings, the State party should also refrain from relying on evidence obtained by treatment incompatible with article 7. The Committee wishes to be informed about the measures taken by the State party to ensure the respect of the right to reparation for the victims.”

##### **Response:**

As noted elsewhere in this submission, as a matter of application of the Covenant, the United States is engaged in an armed conflict with al Qaida, the Taliban, and their supporters. As part of this conflict, the United States captures and detains enemy combatants, and is entitled under the law of war to hold them until the end of hostilities. The law of war, and not the Covenant, is the applicable legal framework governing these detentions. In addition, because Guantanamo Bay is not within the territory of the United States, U.S. obligations under the Covenant do not apply there. Although the Covenant as such does not apply to U.S. activities outside of its territory, the United States does not permit its personnel to engage in acts of torture or cruel, inhuman or degrading treatment of people in its custody either within or outside U.S. territory and takes vigilant action to prevent such conduct and to hold any such perpetrators accountable for their wrongful acts.

U.S. personnel engaged in detention operations are required to comply with U.S. domestic law, the law of war, and applicable international treaty obligations. Cruel,

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<sup>12</sup> Uniform Code of Military Justice, Art. 2(a); 10 U.S.C. § 802(a).

inhuman and degrading treatment or punishment by all U.S. personnel in all locations is prohibited under United States law. We recognize that there have been violations of the law by U.S. personnel. But those who failed to adhere to these treatment standards have been, and will continue to be, held accountable. As described in the U.S. report and in its answers to the Committee's questions during its July 2006 appearance before the Committee,<sup>13</sup> the United States takes proactive measures not only to punish perpetrators of abuse but to train its personnel to prevent such acts, in particular by providing adequate training and clear guidance to its personnel (including commanders) and contract employees, about their respective obligations and responsibilities.

Education programs and information for military personnel (including contractors) that are involved in the custody, interrogation or treatment of individuals in detention include extensive training on the law of war. This training is provided on an annual basis (or more frequently, as appropriate) for the members of every military service and every person, including contractors, who works with detainees. This training on the law of war includes instruction on the prohibition against torture and the requirement of humane treatment.

The United States submitted a lengthy annex<sup>14</sup> with information about actions taken with regard to Defense Department personnel who were accused of abusing detainees in their custody and provided additional factual information during its July 2006 discussions with the Committee.

In accordance with the National Defense Authorization Act, the Department of Defense is required to report to the U.S. Congress certain statistics regarding detainee abuse cases and their final disposition. During the most recent reporting period (June 2005 through September 30, 2006), the Department reported that there were 92 new cases of alleged detainee abuse that were determined to be founded on the basis of the evidence developed during the initial investigation. Of these 92 cases: 16 were referred for further investigation and 55 were closed. In the remaining cases there were 24 courts martial, 21 non-judicial punishments, 12 reprimands, and three administrative discharges.<sup>15</sup>

The Department of Defense continues to take seriously allegations of abuse and will, according to U.S. law and regulation, hold individuals accountable for violations of the law. As noted above, the Department promulgated, on September 5, 2006, a Department-wide directive that prescribes the minimum care and treatment requirements applicable to all detainees under the Department's control as well as provisions for the reporting of violations of Department standards and policies as well as U.S. law (Annex 1).

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<sup>13</sup> ICCPR Report, *supra* note 3; List of Issues to Be Taken Up in Connection With the Consideration of the Second and Third Periodic Reports of the United States of America — Response of the United States of America, at para. 9, available at: <http://www.state.gov/g/drl/rls/70385.htm> [hereinafter "Response to List of Issues"].

<sup>14</sup> Update to Annex One of the Second Periodic Report of the United States of America to the Committee Against Torture, available at: <http://www.state.gov/g/drl/rls/55712.htm> (Oct. 21, 2005).

<sup>15</sup> The total summary of those receiving punishments, those cases requiring additional investigation, and those cases closed, do not equal 92, as cases may involve more than one defendant, and defendants can receive multiple types of punishment for their violation when convicted or otherwise disposed.

## Paragraph 16

### **Recommendation:**

“The State party should review its position, in accordance with the Committee’s general comments 20 (1992) on article 7 and 31 (2004) on the nature of the general legal obligation imposed on States parties. The State party should take all necessary measures to ensure that individuals, including those it detains outside its own territory, are not returned to another country by way of inter alia, their transfer, rendition, extradition, expulsion or refoulement if there are substantial reasons for believing that they would be in danger of being subjected to torture or cruel, inhuman or degrading treatment or punishment. The State party should conduct thorough and independent investigations into the allegations that persons have been sent to third countries where they have undergone torture or cruel, inhuman or degrading treatment or punishment, modify its legislation and policies to ensure that no such situation will recur, and provide appropriate remedy to the victims. The State party should exercise the utmost care in the use of diplomatic assurances and adopt clear and transparent procedures with adequate judicial mechanisms for review before individuals are deported, as well as effective mechanisms to monitor scrupulously and vigorously the fate of the affected individuals. The State party should further recognize that the more systematic the practice of torture or cruel, inhuman or degrading treatment or punishment, the less likely it will be that a real risk of such treatment can be avoided by such assurances, however stringent any agreed follow-up procedures may be.”

### **Response:**

The United States does not transfer or return persons to countries where it determines that it is more likely than not that the person will be tortured. This policy applies to all components of the U.S. Government and to all individuals in U.S. custody, including those outside U.S. territory. Within the territory of the United States, the United States applies this policy in implementation of its international treaty obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture or “CAT”). As elaborated below, however, United States policy and legal obligations on this matter are not governed by the International Covenant on Civil and Political Rights.

The scope of obligations of States Parties under Article 7 of the Covenant is a subject on which the United States is in fundamental disagreement with the Committee. Unlike Article 3 of the CAT, Article 7 of the ICCPR contains no reference to the concept of non-refoulement, stating only that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”



As noted in our July 2006 written responses to Committee questions, the Covenant does not impose a non-refoulement obligation upon States Parties.<sup>16</sup> The United States Government is familiar with the Committee's statements in General Comments 20 and 31 regarding Article 7 (stating that such an obligation exists). The non-binding opinions offered by the Committee in General Comments 20 and 31 have no firm legal basis in the text of the treaty or the intention of its States Parties at the time they negotiated or became party to the instrument. Moreover, as the United States explained during its July 2006 appearance, the States Parties under article 40 of the Covenant did not give the Human Rights Committee authority to issue legally binding or authoritative interpretations of the Covenant. Accordingly, the United States does not consider General Comments 20 and 31 to reflect the "legal obligation" under the Covenant that is claimed by the Committee.

Indeed, the adoption of a provision on non-refoulement was one of the important innovations of the later-negotiated CAT, an innovation necessary because of the fact that the Covenant did not contain any non-refoulement prohibition. States Parties to the Covenant that wished to assume a new treaty obligation with respect to non-refoulement for torture were free to become States Parties to the CAT, and a very large number of countries, including the United States, chose to do so. Accordingly, States Parties to the Convention Against Torture have a non-refoulement obligation under Article 3 of that Convention not to "expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." It should be noted that not even the later-in-time CAT contains a provision on non-refoulement that would apply with respect to cruel, inhuman or degrading treatment or punishment.

As the United States recently explained to the Committee Against Torture, pursuant to its obligations under the CAT, the United States does not expel, return ('refouler'), or extradite a person from the territory of the United States to another country where it is more likely than not that such person will be tortured. Although the Committee "notes with concern" the "more likely than not" evidentiary standard used by the United States, as described more fully below, this is the obligation assumed by the United States and formally notified to the depositary and all States Parties to the CAT in the form of a formal understanding when the United States became party to that treaty.

The totality of the international legal obligations the United States has assumed with respect to non-refoulement in the human rights and refugee context are contained in Article 33 of the Convention Relating to the Status of Refugees (applicable to the United States by virtue of its being a State Party to the Protocol Relating to the Status of Refugees) and Article 3 of the Convention Against Torture. With respect to the latter instrument, at the time the United States became a State Party to the Convention Against Torture, it filed a formal understanding with respect to the scope of the treaty law obligation it was assuming under that article, stating "[t]hat the United States understands the phrase 'where there are substantial grounds for believing that he would be in danger of being subjected to torture,' as used in article 3 of the Convention, to mean 'if it is more likely than not that he would be tortured.'" The United States filed

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<sup>16</sup> Response to List of Issues, *supra* note 13, at para. 10.

the understanding not to articulate a different standard, nor to modify the legal effect of Article 3 as it applies to the United States, but rather simply as a clarification of the definitional scope of Article 3. The United States has not assumed obligations under international human rights and refugee law with respect to non-refoulement other than those described in this paragraph and has specifically assumed no such obligation under the Covenant.

With respect to the scope of the “non-refoulement” obligations in the CAT and the Convention Relating to the Status of Refugees, the United States has read those obligations to apply once a person has entered the territory of the United States. In the context of the Convention Relating to the Status of Refugees, this interpretation has been upheld by the United States Supreme Court. Thus, as to persons who may come into contact with U.S. personnel outside the territory of the United States, the United States is not subject to a legal obligation regarding “refoulement” under either treaty.

Although the United States does not have non-refoulement human rights treaty obligations with respect to persons in U.S. custody outside of its territory, the United States as a matter of policy follows a standard similar to its obligations under Article 3 of the CAT and, accordingly, does not transfer or return persons to countries where it determines that it is more likely than not that the person will be tortured.

The Committee also offered certain recommendations with respect to “the use of diplomatic assurances. . . .” Although the United States, as noted above, does not believe that this subject falls within the scope of the ICCPR, it is pleased as a matter of courtesy to provide to the Committee information on this topic. Where appropriate, the United States may seek assurances that it considers to be credible that transferred persons will not be tortured. It is important to note that diplomatic assurances are a tool that may be used in appropriate cases as a part of a case-specific assessment in order to be satisfied that it is not “more likely than not” that the individual in question will be tortured upon return. Diplomatic assurances are not used as a substitute for such a case-specific assessment. In the context of immigration and extradition removals from the United States, the practice of obtaining torture-related diplomatic assurances from foreign governments is infrequent. There also have been cases where the United States has considered the use of diplomatic assurances, but declined to seek them because the United States was not convinced such an assurance would satisfy its “more likely than not” standard, discussed above.

In assessing the credibility of assurances that it receives, the United States Government looks at, among other things, a country’s human rights record, its record of compliance with past assurances, the level at which the assurances were given, and any risk factors that are presented by the individual being returned or transferred. If, taking into account all relevant information, including any assurances received, the United States believes that the “more likely than not” standard is not met, it does not approve the return of the person to that country.

A transfer pursuant to a diplomatic assurance is not the end of U.S. interest or attention to the treatment the person may receive following such a transfer. Where we receive credible reports that a country has abused a transferred individual, we investigate those

reports by engaging government representatives and other groups and individuals with relevant knowledge. Any determination that a government failed to comply with its assurances would constitute a serious issue in the context of our bilateral relationship with that government and would, of course, have an adverse impact on our ability to do future transfers to that country.

## Paragraph 20

### Recommendation:

Regarding the U.S. Supreme Court decision in Hamdan v. Rumsfeld, “[t]he State party should provide the Committee with information on its implementation of the decision.”

### Response:

In Hamdan v. Rumsfeld, the Supreme Court of the United States held that Common Article 3 of the Geneva Conventions applies to the conflict with al Qaida.<sup>17</sup> Since meeting with the Committee, the United States has confirmed that all U.S. government practices with respect to detainees are consistent with the Court’s decision.

On July 7, 2006, shortly after the Hamdan decision, the Deputy Secretary of Defense, Gordon England, issued a directive instructing the Department of Defense to conduct a review to ensure that all of its operations are consistent with Common Article 3 of the Geneva Conventions (Annex 3). The United States has also confirmed that all agencies of the United States are required to comply with Common Article 3 in the conduct of all detention operations in the conflict against al Qaida.

On October 17, 2006, President Bush signed into law the Military Commissions Act of 2006 (MCA)(Annex 4).<sup>18</sup> The purpose of the Act is to establish procedures -- consistent with the Hamdan decision -- governing the use of military commissions to try alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses. The MCA makes numerous changes to the original military commissions in order to address the substantive concerns raised by the United States Supreme Court and the international community, and to ensure that military commissions are consistent with Common Article 3’s requirement that individuals be tried by “a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”

On January 18, 2007, the Secretary of Defense submitted to Congress a Manual for Military Commissions (Annex 5) -- a comprehensive manual for the full and fair prosecution of alien unlawful enemy combatants by military commissions. In accordance with the MCA, the Manual specifies the rules for the military commissions, including the rules of evidence and the elements of crimes. The Manual is intended to further ensure that alien unlawful enemy combatants who are suspected of war crimes

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<sup>17</sup> Hamdan v. Rumsfeld, 126 S.Ct. 2749 (2006).

<sup>18</sup> Military Commissions Act of 2006, Pub. L. No. 109-366 (Oct. 17, 2006).

and certain other offenses are prosecuted before regularly constituted courts, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

### **Paragraph 26**

#### **Recommendation:**

“The State party should review its practices and policies to ensure the full implementation of its obligation to protect life and of the prohibition of discrimination, whether direct or indirect, as well as of the United Nations Guiding Principles on Internal Displacement, in matters related to disaster prevention and preparedness, emergency assistance and relief measures. In the aftermath of Hurricane Katrina, the State party should increase its efforts to ensure that the rights of the poor, and in particular African-Americans, are fully taken into consideration in the reconstruction plans with regard to access to housing, education and healthcare. The Committee wishes to be informed about the results of the inquiries into the alleged failure to evacuate prisoners at the Parish prison, as well as the allegations that New Orleans residents were not permitted by law enforcement officials to cross the Greater New Orleans Bridge to Gretna, Louisiana.”

#### **Response:**

The United States Federal Government is aggressively moving forward with implementing lessons learned from Hurricane Katrina, including improving procedures to enhance the protection of, and assistance to, economically disadvantaged members of society. In our July 2006 written responses to Committee questions, the United States provided extensive information on measures taken in the context of the disaster caused by Hurricane Katrina.<sup>19</sup>

Following Hurricane Katrina, which devastated the Gulf Coast region of the United States, there were media reports of alleged ill-treatment perpetrated by law-enforcement personnel. One of the reports included allegations that individuals were not permitted to cross the Greater New Orleans Bridge to Gretna, Louisiana. The Louisiana Attorney General’s Office conducted an exhaustive inquiry into that allegation. The investigation currently is under review by the local prosecutor’s office. After that office determines whether it will seek any criminal charges in connection with this incident, the Department of Justice’s Civil Rights Division will determine whether additional investigation is necessary and whether the facts implicate a violation of any federal statute.

Additionally, in September 2005, the Civil Rights Division requested the FBI to conduct an investigation into allegations that correctional officers did not properly transfer inmates from the Orleans Parish Prison during the aftermath of Hurricane Katrina. After completing its initial investigation, the FBI forwarded the results of that investigation to the Division. The Division reviewed the results of the initial FBI investigation and

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<sup>19</sup> “Response to List of Issues,” *supra* note 16, at para. 16.

concluded that there was insufficient evidence to establish a violation of federal criminal law. Thereafter, the FBI informed the Division that it was pursuing additional leads regarding the treatment of prisoners at the Orleans Parish Prison. Based on that additional information, the Division asked the FBI to continue the investigation. That investigation is ongoing.

In providing assistance to individuals affected by Katrina, the Federal Government is committed to helping all victims, and in particular those who are in the greatest need. In that regard, on February 15, 2006, the Attorney General announced a major new civil rights initiative, Operation Home Sweet Home. This fair housing initiative was inspired by victims of Hurricane Katrina who had lost their homes and were seeking new places to live. This is a concentrated initiative to expose and eliminate housing discrimination in the United States. The initiative will focus on improved targeting of discrimination tests, increased testing, and public awareness efforts.<sup>20</sup> One of the key components of Operation Home Sweet Home is concentrated testing for housing discrimination in areas recovering from the effects of Hurricane Katrina and in areas where Katrina victims have been relocated. In addition, the Division is operating a new website devoted to fair housing enforcement: <http://www.usdoj.gov/fairhousing>. It has an online mechanism for citizens to submit tips and complaints, as well as obtain information about what constitutes housing-based discrimination.

Further, in the aftermath of Katrina, the U.S. Department of Housing and Urban Development has initiated a number of efforts to prevent discrimination in relocation housing. These include grants of \$1.2 million to Gulf Coast Fair Housing groups for outreach to evacuees and investigation of discrimination complaints. The U.S. Department of Health and Human Services has also dedicated substantial resources to help redesign and rebuild Louisiana's health-care system to enhance health care in Louisiana.

The Government of the United States is committed to do what it takes to help residents of the Gulf Coast rebuild their lives in the wake of this disaster and has committed \$110.6 billion in federal aid alone for relief, recovery and rebuilding efforts. A partial list of the work Federal agencies have accomplished to help not only get the region back on its feet but also to provide for a stronger and better future for the residents of the Gulf Coast can be found at: <http://www.dhs.gov/katrina>. We assure the Committee that the needs of the poor and most affected communities, including with respect to "access to housing, education and healthcare," are being taken into account in the government's responses to Katrina.

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<sup>20</sup> The Department of Justice currently operates a testing program dedicated to proactively uncovering housing discrimination. The program is conducted primarily through paired tests, an event in which two individuals -- one acting as the "control group" (*e.g.*, white male) and the other as the "test group" (*e.g.*, black male) -- pose as prospective buyers or renters of real estate for the purpose of determining whether a housing provider is complying with the fair housing laws.